## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:06CV206-03-MU

MALCOLM WRIGHT aka Malcolm Y. Azariah,	)
Plaintiff,	)
v.	) ) )
CHARLES McCURRY, et. al.,	) )
Defendants.	)

THIS MATTER is before this Court on Defendant McClelland and Capellupo's Motion for Judgment on the Pleadings, filed February 26, 2007 (Document Number 22); Defendant Uhren's Motion to Dismiss, filed February 26, 2007 (Document Number 28); and Defendant McCurry's Motion to Dismiss, filed April 12, 2007 (Document Number 32.)

On July 5, 2006 Plaintiff filed a 261 page Complaint pursuant to 42 U.S.C. § 1983 against 29 defendants, all employed by the Department of Corrections. Plaintiff's Complaint contained a variety of allegations including but not limited to; confiscation of personal property such as medications, legal materials and religious material, allowing staff to strip search Plaintiff without cause and allowing staff to use unnecessary force against Plaintiff, interference with mail, both incoming and outgoing, and failure to provide (or allow for purchase) Plaintiff with legal envelopes, allowing and instigating false disciplinary charges to be brought against Plaintiff, threatening Plaintiff with punishment for refusal to become an informant, and an unfair

disciplinary process without due process of law. The Court conducted an initial review of Plaintiff's Complaint and directed that several defendants file an Answer and dismissed the remaining defendants.

On February 26, 2007 Defendants McClelland and Capellupo filed a Motion for Judgment on the Pleadings (Document Number 22.) In response, this Court sent the Plaintiff an Order in compliance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) (Document Number 26.) In this Order, the Court notified the Plaintiff that the Defendants had filed a Motion for Judgment on the Pleadings and that if the Plaintiff failed to respond to this motion within twenty days, the Court may grant the motion. On February 27, 2007 Defendant Uhren filed a Motion to Dismiss (Document Number 28.) In response, this Court sent the Plaintiff an Order in compliance with Roseboro (Document Number 30.). In this Order, the Court notified the Plaintiff that the Defendant Uhren had filed a Motion to Dismiss and that if the Plaintiff failed to respond to this motion within twenty days, the Court may grant the motion. On April 12, 2007 Defendant McCurry filed a Motion to Dismiss (Document Number 32.) In response, this Court sent the Plaintiff an Order in compliance with Roseboro (Document Number 34.) In this Order, the Court notified the Plaintiff that the Defendant McCurry had filed a Motion to Dismiss and that if the Plaintiff failed to respond to this motion within twenty days, the Court may grant the motion.

Plaintiff has failed to file a response to any of the three motions mentioned above and his

<sup>&</sup>lt;sup>1</sup> On March 19, 2007 this Court received its February 27, 2007 Order back in the United States mail with a notation that a correct prison number was required in order to deliver the mail. An employee of the Clerk's Office obtained Plaintiff's correct prison number and mailed the Order to Plaintiff again. No further mail was returned as undeliverable again.

deadline for filing a response has long since expired. The Court has carefully reviewed the Motion for Judgment on the Pleadings and both Motions to Dismiss and finds that for the reasons set forth therein the Defendants are entitled to a dismissal.

## THEREFORE, IT IS HEREBY ORDERED that:

- Defendant McClellen and Capeluppo's Motion for Judgment on the Pleadings
  (Document Number 22) is GRANTED;
  - 2) Defendant Uhren's Motion to Dismiss (Document Number 28) is **GRANTED**;
  - 3) Defendant McCurry's Motion to Dismiss (Document Number 32) is GRANTED; and
  - 4) Plaintiff's Complaint is **DISMISSED**.

SO ORDERED.

Signed: May 17, 2007

Graham C. Mullen

United States District Judge